III

RULING BY THE PRESIDENT REGARDING THE PREROGATIVE OF HIS EXCELLENCY THE GOVERNOR IN RESPECT OF APPOINTMENTS.

"On the 11th December the hon. Member, Mr. Ranganatha Mudaliyar, moved :—

That this Council recommends to the Government that one of the Deputy Directors of Agriculture, who is a Graduate in Agriculture and possesses the necessary district experience, be appointed as the Principal of the Agricultural College at Coimbatore.

"After the Motion was duly seconded, the hon. the Law Member raised a point of order in relation to this Motion, his object being to secure that Motions of this kind are regulated by some uniform procedure. The point raised by the hon. the Law Member was that the Principalship of the Agricultural College was one of the appointments which had to be made by the Governor; that though advice might be given to the Governor in regard to the making of the appointment, such advice was after all only advice; the point was whether, having regard to the prerogative of the Governor in the matter, the topic should be allowed for discussion, whether the Council should take upon itself to recommend that the Governor's discretion should be used in a particular way. After a somewhat desultory discussion the Motion was adjourned to this day, so as to enable me to give a considered ruling on the point raised.

"I would first premise that Agriculture is a Transferred Subject, and under section 52 (3) of the Government of India Act the Governor in relation to Transferred Subjects, *shall* be guided by the advice of his Ministers unless he sees sufficient cause to dissent from their opinion, in which case he may require action to be taken otherwise than in accordance with that advice. Under section 134 (4) 'Local Government' means the Governor acting with Ministers in the case of Transferred Subjects. In regard to the Principalship of the Agricultural College the proposal of Mr. Ranganatha Mudaliyar is that the Minister should so advise the Governor that the appointment shall be filled up in a particular way. The recommendation is to the Government, that is, to the Governor acting with his Ministers. And though the Governor is not bound to accept the advice of his Minister in this—or for the matter of that, in any other matter relating to a Transferred Subject—the Council, I take it, is not precluded from offering its advice, which, I presume, is intended primarily for the Minister. I need hardly point out at this stage that under the reformed constitution which has been set up, the Ministers are amenable to the control of the Legislative Council to an extent to which the Members of the Executive Council are not.

"I now pass to Rule 10 of the Devolution Rules regulating the exercise of authority over members of public services, framed under section 45-A of the Government of India Act. Here it is explicitly laid down that the authority vested in the Local Government over officers of the public services shall, in the case of officers serving in a department dealing with Transferred Subjects, be exercised by the Governor acting with the Minister in charge, provided that (*a*) no order affecting emoluments or pensions, no order of formal censure, and no order on a memorial shall be passed to the disadvantage of an officer of an All-India or Provincial Service without the personal concurrence of the Governor, and (*b*) no order for the posting of an officer

of an All-India Service shall be made without the personal concurrence of the Governor. It seems to me that the hon. Member Mr. Ranganatha Mudaliyar's Motion refers to a matter of administration rather than to the posting of an officer of an All-India service. But even if it is construed in the latter sense, it is clear that the Minister should, if the Motion is passed, seek the Governor's concurrence to the posting of an officer of a particular type. I fail to see where the question of His Excellency the Governor's prerogative comes in. To say that the Minister shall not take action of a particular kind without the Governor's personal concurrence is very different from saying that the Governor has a prerogative of action which can be exercised, if he wishes, even without consulting the Minister.

"Further, we have had a number of precedents during the last three years in which this Council passed Motions recommending to the Government of the day to take action of a particular kind in regard to appointments to particular services. A list* of these Motions is appended to this ruling. Some of the Motions go back to the pre-Reform days. Only once, throughout this period did the hon. Member, the Leader of the House, mention in this connexion the prerogative of the Governor, but he did not raise it as a point of order. Not only so; but in all the cases the Government took part in the debate and in more than one instance the original Motion was amended on the Motion of a Member of the Government.

"It seems to me, therefore, that the point of order raised should not be allowed. I therefore disallow it."

The House then adjourned for lunch at 1-35 p.m.

The House re-assembled after lunch at 2-30 p.m. with the hon. the Deputy President in the chair.

MOTIONS FOR REAPPROPRIATION FOR 1923-24—*cont.*

The hon. the DEPUTY PRESIDENT :—"The question before the House is the Motion made by the hon. the Raja of Panagal before the lunch interval, that the Government be granted an additional sum of Rs. 19,100 under 'Medical—Transferred'. (After a pause), I shall put the Motion to the House."

The Motion was put and carried and the Grant was made.

Grant XXXIV.

The hon. Mr. A. R. KNAPP :—"Mr. President, I beg to move—

That the Government be granted an additional sum of Rs. 13,400 under '31. Education—Primary—Reserved—for grants to local bodies for Primary Education (Agency)' to be provided from savings under 'Grant XVII. Education—Transferred'.

"The reasons for making this Motion for a Grant are given in the Memorandum of the hon. the Finance Member placed on the Council table. As I observe that an hon. Member has given notice of a proposition which will raise a discussion on this subject, I shall not say anything more now. While I am perfectly prepared to furnish this House any further information they may require on this particular matter, I think it will be convenient if I postpone what I have to say till after my hon. Friend opposite has raised his points."

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* Printed as Appendix on pages 500-501 infra.